80-307

No. .....

Supreme Court, U. S.
FILED
AUG 28 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER 1980 TERM

STEPHENS INSTITUTE, a corporation, d/b/a ACADEMY OF ART COLLEGE,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

CALIFORNIA FEDERATION OF ART TEACHERS,
Intervenors.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Supplement to Appendix to Petition

BENJAMIN H. PARKINSON
ACKERMAN, JOHNSTON, NORBERG & PARKINSON
235 Montgomery Street, Suite 2400
San Francisco, California 94104
Telephone: (415) 981-3741
Counsel of Record for Petitioner Academy of Art College (Stephens Institute)

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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RICHARD H. DEANE
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United States Court of Appeals
for the Ninth Circuit

No. 79-7215

STEPHENS INSTITUTE, a Corporation
d/b/a ACADEMY OF ART COLLEGE,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

JUDGMENT

Before: KILKENNY and SCHROEDER, Circuit Judges and CAMPBELL, Senior District Judge*

THIS CAUSE came on to be heard upon a petition filed by Stephens Institute, a corporation d/b/a Academy of Art College, San Francisco, California, its officers, agents, successors, and assigns on May 8, 1979, and upon a cross-application filed by the National Labor Relations Board to

*Honorable William J. Campbell, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

enforce said order. The Court heard argument of respective counsel on February 14, 1980, and has considered the briefs and transcript of record filed in this cause. On May 5, 1980, the Court being fuly advised in the premises, issued an opinion enforcing the Board's Order. In conformity therewith it is hereby

ORDERED AND ADJUDGED by the Court that Petitioner, Stephens Institute, d/b/a Academy of Art College, San Francisco, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Terminating employees for the reason that they engage in protected activities on behalf of California Federation of Art Teachers, Local No. One, (hereinafter called the Union) or any other labor organization, or because they are members of the above-mentioned union, or any other labor organization.

(b) Cancelling classes of instructors and refusing to offer them a future teaching assignment because they are members of the above-named union or any other labor organization.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the N.L.R.A. (hereinafter called the Act) as amended.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer [William] Liam Cutchins, Joseph Rees, and Paul Pratchenko immediate reinstatement to the positions they held as instructors on the Petitioners faculty, discharging if necessary any instructors hired to teach their course

subjects as of the beginning of the 1978 spring semester and thereafter, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole, in the manner set forth in the section of the A.L.J.D. entitled the "Remedy," (attached hereto as Appendix A) for any loss of earnings they may have suffered by reason of the unlawful discrimination against them.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary and relevant to analyze and compute the amount of the back-pay and reinstatement rights due under this recommended Judgment.

(c) Post at its San Francisco, California, facility, copies of the attached notice marked "Appendix B." Copies of said notice on forms provided by the Regional Director for Region 20, after being duly signed by the Petitioners authorized representative, shall be conspicuously posted by it immediately upon receipt thereof, and maintained for 60 consecutive days thereafter, in places where notices to employees are customarily posted. Reasonable steps shall be taken by the Petitioner to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the aforesaid Regional Director for Region 20, in writing, within 20 days from the date of this Judgment, what steps the Petitioner has taken to comply herewith.

Endorsed, Judgment Filed and Entered

SO ORDERED:
JUDGES:

/s/ Richard H. Deane
Richard H. Deane
Clerk

A TRUE COPY,

ATTEST:
Richard H. Deane
Clerk

JOHN F. KILKEENY, CJ
MARY M. SCHROEDER, CJ
WILLIAM J. CAMPBELL, DJ

A TRUE COPY
ATTEST 3 Jul 1980
Richard H. Deane
Clerk of Court
by: OSCAR FAGLE
Deputy Clerk

APPENDIX A

The Remedy

Having found that the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, the Respondent shall be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. In view of the finding that the Respondent unlawfully terminated the employment of [William] Liam Cutchins and cancelled the classes of Joseph Rees and Paul Pratchenko for the reason that they engaged in protected concerted activity and in order to discourage membership in and activities on behalf of the Union, the Respondent shall be ordered to offer them full and immediate reinstatement to their former positions of employment, discharging if necessary any instructors hired to teach their course subjects since the beginning of the 1978 spring semester, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the unlawful discrimination against them. Backpay shall be computed with interest thereon, in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB No. 117 (1977).[31]

Since the unfair labor practices commited here are of a character striking at the very heart of employee rights guaranteed by the Act, it will also be recommended that the Respondent be required to cease and desist from interfering in any manner with the rights of employees as guaranteed

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[31]See generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

by Section 7 of the Act. *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532, 536 (5th Cir. 1941); *N.L.R.B.* v. *The Bama Co.*, 353 F. 2d 320, 323-324 (5th Cir. 1965); *P. R. Mallory and Co., Inc.* v. *N.L.R.B.*, 400 F.2d 956, 959-960 (7th Cir. 1968), cert. denied 394 U.S. 918.

APPENDIX B

NOTICE TO EMPLOYEES POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

THE NATIONAL LABOR RELATIONS BOARD HAVING FOUND, AFTER A HEARING IN WHICH ALL PARTIES HAD AN OPPORTUNITY TO PRESENT EVIDENCE, THAT WE COMMITTED CERTAIN UNFAIR LABOR PRACTICES IN VIOLATION OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, WE HEREBY NOTIFY YOU THAT:

WE WILL NOT terminate employees because they engage in activities protected by Section 7 of the National Labor Relations Act, as amended, and/or because they are members of CALIFORNIA FEDERATION OF ART TEACHERS, LOCAL NO. ONE, or any other labor organization.

WE WILL NOT cancel classes of our instructors and refuse to offer them future teaching assignments because they are members of the above-named union, or any other labor organization, and have engaged in union and/or protected concerted activities on behalf of the above-named union, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Nationl Labor Relations Act, as amended.

WE WILL offer [William] Liam Cutchins, Joseph Rees, and Paul Pratchenko immediate and full rein-

statement to their former positions of employment, discharging if necessary any instructors hired to teach their course subjects since the beginning of the 1978 spring semester and thereafter, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of earnings they may have suffered by reason of the unlawful discrimination against them.

STEPHENS INSTITUTE, d/b/a
ACADEMY OF ART
COLLEGE
(Employer)

Dated ..... By .....
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE
AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice of compliance with its provisions may be directed to the Board's Office.